

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.160/91

Date of decision: 1-10-1993

Between

Geddam Appa Rao

... APPLICANT

A N D

1. The Government of India, rep. by
its Secretary, Min. of Urban Develop-
ment, C.P.W.D., New Delhi.
2. The Superintending Engineer,
Visakhapatnam central circle,
C.P.W.D., Muralinagar,
Visakhapatnam-7.
3. Executive Engineer,
Vizag Central Division No.III,
C.P.W.D., Gajuwaka,
Visakhapatnam-26.

... RESPONDENTS

Appearance: .

For the applicant : Sri G.Bikshapathi, Advocate

For the Respondents : Sri N.V.Ramana, Addl.CGSC

CORAM:

The Hon'ble Mr. Justice V.Neeladri Rao, Vice-Chairman

The Hon'ble Mr. P.T.Thiruvengadam, Member (Admn.)

contd...2.

J U D G E M E N T

{ as per Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman }

pleaded
The applicant that he was appointed as NMR peon under Respondent No.3 with effect from 9-3-84 and till he was disengaged on 6-1-89 he worked continuously without any break. He also pleaded that he submitted applications dated 20-7-89, 1-10-89 and 1-12-90 to the R-3 requesting for reinstatement and even then he was not engaged.

2. The case of the applicant is that CPWD ~~is~~ the establishment in which he was engaged, is an industry governed by the provisions of I.D.Act and as it is a case of termination without any notice or notice pay and retrenchment compensation even though he worked for more than 240 days immediately preceding 12 months prior to retrenchment, there is violation of Section 25 F of the Industrial Disputes Act. It is also the case of the applicant that after removing him, R-3 was engaging other NMR peons without giving any preference to the applicant.

✓
3. This O.A. was filed praying for a declaration that the action of the R-3 in terminating his services with effect from 6-1-89 is illegal, arbitrary and invalid and consequently to direct the respondents to reinstate him into service with back wages and attendant benefits including regularisation of service as peon with regular scale of pay.

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4. It was pleaded in the counter filed by the R-3 that the applicant was engaged only as a casual labourer and the appointment was not to any post and the applicant had not worked for 240 days in a ^{any} year and as there was no work he was not further engaged and no one else was engaged as NMR in the place of the applicant. It was also stated for the respondents that CPWD is not an industry coming within the purview of Section 3(J) of the I.D. Act.

5. 1987 Lab. I C. 89 (The PWD Employees' Union and Ors., Vs. State of Gujarat and Ors.), a judgment of the Gujarat High Court was relied upon by the applicant to ^{contend} show that CPWD is an industry. Therein the Gujarat High Court held that State PWD is an industry coming within the ambit of Section 2(J) of the I.D. Act. We feel that for the reasons stated therein the CPWD can also be held as an industry and as such the provisions of I.D. Act are applicable.

6. ^{lays down that} Section 25(F) of the I.D. Act ~~is attracted if one~~ month's notice or notice pay and retrenchment compensation ^{have to be} ~~were not~~ paid at the time of retrenchment of an employee who ^L completed one year of service ^{if} and if one worked for 240 days in the 12 months preceding the date of retrenchment, he should be deemed to have worked for one year for having the benefit of Section 25 ^F of the I.D. Act. While the applicant pleaded that he worked for more than 240 days in the relevant 12 months, the respondents pleaded that the applicant did not work for 240 days in any year. The question as to

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whether the employee worked for 240 days has to be considered in regard to the 12 months preceding the date of retrenchment and ~~in that~~ not with reference to the calendar year. ^{and so} As the counter of respondents suggest that their plea is ~~based~~ on the basis that the applicant had not worked for 240 days in any calendar year ^{we} required the learned counsel for the respondents to produce the particulars in regard to the number of days worked by the applicant from the date he was engaged till the date he was disengaged. Then the necessary particulars were produced. It is evident from the same that the applicant worked for more than 240 days within the period of 12 months immediately preceding his disengagement. (The applicant worked for 112 days in 1989 till 5-6-89 and 135 days from 6-6-88 till 31-12-88). Admittedly the applicant was not paid the retrenchment compensation or the notice pay. Thus there is force in the contention for the applicant that there was violation of Section 25(F) of the I.D. Act.

7. But when it was pleaded for the respondents that no one ~~was~~ else was engaged as NMR peon in the place of the applicant and that he was not further engaged for want of work, no rejoinder was filed by the applicant. Hence in view of the material on record it has to be held that there is no work ^{for} in the job ^{for} in which the applicant was engaged. Further the respondents denied the plea of the applicant that he submitted representations dated 20-7-89, 1-10-89 and 1-12-90 requesting for reinstatement. This O.A. was filed on 14-2-91 and thus more than 20 months have elapsed since

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disengagement. The O.A. has to be filed within one year from the date ~~of~~ when the cause of action had arisen.

As there is no work in regard to the job for which the applicant was engaged and as there was delay in filing

hump sum amount is not ordered. But the order that
this O.A., we feel that ~~no~~ order can be passed ~~to seek~~ ^{to}

to direct the respondents to pay the applicant the

notice pay and retrenchment compensation which are

payable under Section 25-F of the I.D. Act. || The

applicant had not got his name registered in the

Employment Exchange. In the counter it is stated

that ^{it} the applicant is going to register his name in

the Employment Exchange, and his case will be considered

alongwith other casual workers. The Supreme Court

expressed its anguish in Judgment Today 1992(1)SC 394

(Delhi Development Horticulture Employees' Union Vs.

Delhi Administration, Delhi & Ors.) about the tendency

in engaging ~~and~~ in many a case by taking money, the

persons who had not even got their names registered

in the Employment Exchange when so many who earlier

got their names registered in the Employment Exchange

^{over} were languishing. In P&T Department, an approved

list of casual labourers in regard to the names

sponsored by the Employment Exchange, and an unapproved

list of casual labourers in regard to those who got

their names registered in the Employment Exchange but

whose names were not sponsored ~~and those who~~ are

being maintained, and those who are in the approved

list are placed above those who are in the unapproved

list for the purpose of seniority. It is not clear

as to whether the CPWD is also following the same

policy. So in the circumstances, ^{and} in view of the

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averments in the counter of the R-3, it is just and proper to allow the applicant to make a representation to R-3 after he gets his name registered in the Employment Exchange and then R-3 has to consider the same in accordance with the rules and also keeping in view that the Applicant worked for considerable period between 1987 and 1989. In the result, the respondents are directed to pay the applicant the retrenchment compensation and notice pay payable under Section 25-F of the I.D. Act within three months from the date of receipt of the order failing which it carries interest at 12% per annum from such expiry of three months. The applicant, as already observed, ^{is free to} can make a representation to R-3 after he gets his name registered in the Employment Exchange and then R-3 has to act in accordance with the rules. The O.A. is ordered accordingly. No costs.

P. D. Thiruvengadam
(P.T. Thiruvengadam)
Member/Admn.

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman

Dated: 1st day of October, 1993.

mhb/

84/10/93
Deputy Registrar(J)

To

1. The Secretary, Govt. of India,
Min. of Urban Development, C.P.W.D. New Delhi.
2. The Superintending Engineer,
Visakhapatnam Central Circle, C.P.W.D. Muralinagar,
Visakhapatnam. 7
3. The Executive Engineer, Vizag Central Division No. III,
C.P.W.D. Gajuwaka, Visakhapatnam-26.
4. One copy to Mr. G. Bikshapathi, Advocate, CAT. Hyd.
5. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

pvm

P. D. Thiruvengadam
4/10/93

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

THE HON'BLE MR. A. B. BORTHY : MEMBER (A)

THE HON'BLE MR. T. CHAN SEKHAR REDDY
AND MEMBER (JUDL)

THE HON'BLE MR. P. T. TIRUVE
DAM: M(A)

Dated: 10 - 10 - 1993

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

in

O.A.No.

160/91

T.A.No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

pvm

